

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Modification/Termination of Probation of:

CESAR G. SILVANO,

Operator License No. OPR 11237

Petitioner.

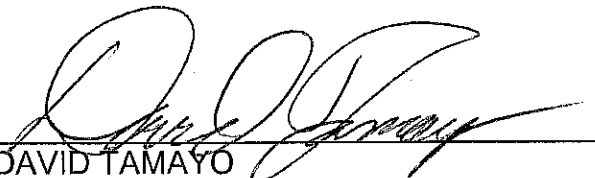
OAH No. 2014120476

**DECISION**

The attached Proposed Decision of the Administrative Law Judge, is hereby adopted by the Structural Pest Control Board as its Decision in the above-entitled matter.

The Decision shall become effective on April 11, 2015.

IT IS SO ORDERED March 12, 2015.

  
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DAVID TAMAYO  
President, Structural Pest Control Board

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**DECISION**

On January 14, 2015, in San Diego, California, the Structural Pest Control Board (Board) heard this matter. A quorum of board members was present. Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, conducted the hearing.

Deputy Attorney General Langston Edwards represented the Attorney General, State of California, pursuant to Business and Professions Code section 11522.

Petitioner Cesar G. Silvano represented himself.

The matter was submitted to the Board on January 14, 2015

**FACTUAL FINDINGS**

*License Histories*

1. On August 15, 2001, Applicator's License No. RA 18828 was issued in Branch 2 to Petitioner as an employee of Joel M. Carino, Inc., dba Mastercare Termite Control (Mastercare). The license was upgraded to Branches 2 and 3 on January 30, 2002. The license was downgraded to Branch 2 due to the issuance of a Field Representative's License. The license was cancelled on August 15, 2004.

2. On August 15, 2002, Field Representative's License No. FR 35004 was issued in Branch 3 to Petitioner. The license was cancelled on January 4, 2006, when Petitioner was issued an Operator's License.

3. On January 4, 2006, in Branch 3, the Board issued Operator's License No. OPR 11237 to Petitioner.

4. May 25, 2006, Petitioner's Operator's License No. OPR 11237 was listed as the branch office supervisor for Mastercare.

5. On April 23, 2008, Petitioner left his employment with Mastercare.

6. On May 30, 2008, Petitioner became the Qualifying Manager of Mastercare Termite Control South Bay (Mastercare South Bay) in Carson, California.

7. On May 16, 2011, Petitioner disassociated as Qualifying Manager of Mastercare South Bay.

8. On July 18, 2011, Petitioner was employed by Kal Fume, Inc.

9. On November 23, 2013, Petitioner's license was placed on probationary status for three years.

10. On July 14, 2014, Petitioner became the President and Qualifying Manager of Zaitech Exterminator, Inc. (Zaitech), and his license reflected dual employment. Company Registration Certificate No. PR 7084 was issued in Branch 3 to Zaitech the same day.

11. Petitioner's license is in effect and renewed through June 30, 2017.

#### *Disciplinary Action*

12. In February 2010, Petitioner conducted an inspection of a single family home and property. Petitioner prepared an inspection report dated February 24, 2010, detailing the results of his inspection and making recommendations for treatment. The inspection report contained significant deficiencies: it was not prepared in the format required by the Board; it failed to include the homeowner's name and address; it failed to note whether prior inspection tags were located at the property; it failed to report that the property required treatment for subterranean termites and decay fungi; it failed to report the full extent of cellulose debris, the form stake, and form board in the substructure; it failed to report evidence of excessive moisture conditions in the substructure and at a substructure access vent; it failed to report inaccessible areas in the substructure, below the stall shower and in the attic; it failed to make recommendations for further inspection of those areas; it failed to report evidence of termites in the attic; and it failed to report evidence of drywood termites and drywood termite damage in the rafter tails in the eaves area.

13. Mastercare South Bay and Petitioner performed the work that was recommended in the February 24, 2010, inspection report. Petitioner issued a completion notice on April 15, 2010, that certified that all the work recommended in the February 24,

2010, inspection report had been completed. The completion notice was not in the format required by the Board.

14. In August 2010, the homeowner noticed termites flying around his property and requested a re-inspection. Although Petitioner returned to the property on September 3, 2010, Petitioner was not personally responsible for conducting the re-inspection or preparing the re-inspection report. Mastercare South Bay employees performed the re-inspection, and they again failed to discover all of the issues that required treatment. As the qualifying manager of Mastercare South Bay, Petitioner was responsible for the work performed by Mastercare South Bay employees.

15. Petitioner stopped working for Mastercare South Bay prior to May 2011 because he was not being paid. He remained the qualifying manager until May 16, 2011.

16. In June 2011, the homeowner again noticed termites flying around his property, and he filed a complaint with the Board.

17. On July 26, 2012, the Interim Executive Officer of the Board filed Accusation, Case No. 2013-7, against Petitioner, three other individuals, and Mastercare South Bay. The Accusation contained sixteen causes for discipline relating to inspections and work performed on the single family home; eight of the causes were against Petitioner as an operator and as the former qualifying manager of Mastercare South Bay.

18. By Decision and Order effective November 23, 2013, the Board found cause to discipline Petitioner's Operator's License for six violations relating to the inspection he performed in February 2010, the report he prepared after the inspection, and faulty work performed by Mastercare South Bay when he was the qualifying manager. The Decision and Order noted that, upon learning of the homeowner's complaint, Petitioner spoke to the Board's investigator and offered to correct the problems the homeowner reported. The Board's investigator told Petitioner not to do anything because Mastercare South Bay had already agreed to remedy the situation. The Decision also confirmed that, when Mastercare South Bay did not fix the problems, but instead made them worse, Petitioner was not contacted or offered an opportunity to address the continuing problems.

The Board determined that disciplinary action was warranted. The Board revoked Petitioner's Operator's License; stayed the revocation; and placed Petitioner on three years' probation with certain terms and conditions, including that Petitioner pay \$500 to the homeowner, and that he pay \$500 to the Board for costs incurred in the investigation and enforcement of the case against him.

#### *The Petition for Reinstatement of Revoked License*

19. On October 21, 2014, Petitioner signed a Petition for Modification and/or Termination of Probation (Petition). Petitioner took responsibility for his conduct that resulted in the disciplinary action against him and asked that his probation be modified or

terminated because he disassociated from Mastercare South Bay before the homeowner's complaint was filed; he offered to correct the problem even after he disassociated from the company; and he paid the restitution and Board's fees. Petitioner also wrote that he learned from the disciplinary action and has become "more conscious now in the application of the rules and regulations relating to the practice of my profession." He asserted that he reads the Board's 2007 Handbook and checks the Board's website for updates.

20. Petitioner attached six reference letters to his Petition. The letters were dated from August to October 2014. The letters were from a real estate broker, a real estate agency, a homeowners Association, co-workers and the owner of the company that employs petitioner. The letters commend Petitioner for being diligent, consistent, honest, attentive to detail, kind, conscientious, and thorough.

#### *Evidence Presented at the Hearing*

21. Petitioner's testimony was consistent with his Petition. Additionally, he criticized Mastercare South Bay because it did not provide training or guidance to its employees. As related to the Board's finding that he did not use the correct inspection forms, he stated that he relied on the forms provided by the company.

Although Petitioner was the qualifying manager of Mastercare South Bay from May 2008 until May 2011, he denied he had any significant involvement with the company's operations. He stated that he was the qualifying manager "in name only" and that he had no authority to do anything that involved running the business. He testified that the owner of Mastercare South Bay was a friend, and he agreed to serve as the qualifying manager to help his friend.

Petitioner said that he has been licensed as an operator since 2006. He attributed his problems with the Board to being overconfident; he felt like he knew everything. He understands now that he did not, and does not, know everything, and he is more careful now. Petitioner reads "front to back" the 2007 Handbook of rule and regulations to make sure he is properly conducting inspections and completing reports. He attended one seminar that was related to new pest control products.

#### LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving the basis for his requested relief. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.)

2. Government Code section 11522 authorizes a person whose license has been disciplined to petition for reinstatement or reduction of the penalty after a period of not less than one year has elapsed from the effective date of the decision imposing discipline.

3. "A 'qualifying manager' is the licensed operator or operators designated by a registered company to supervise the daily business of the company and to be available to supervise and assist the company's employees." (Bus & Prof. Code § 8506.2.)

#### *Evaluation*

4. Cause does not exist to grant the petition for modification and/or termination of Petitioner's probation. Petitioner is to be commended for accepting responsibility for violating the Board's rules and regulations in 2010 when he failed to properly perform the duties and responsibilities required by his operator's license. However, Petitioner did not demonstrate at the hearing that he has taken sufficient steps to ensure that he has a full and complete knowledge of the rules and regulations governing structural pest control. His reliance on the 2007 Handbook is not evidence that Petitioner is keeping up-to-date with industry practices and guidelines. He has not shown initiative in taking educational classes designed to maintain and improve his skills and knowledge.

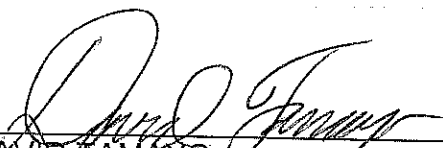
It is troubling that Petitioner attributed blame to Mastercare South Bay for not training or providing guidance to its employees and that Petitioner relinquished his responsibilities as qualifying manager to others. As qualifying manager, Petitioner was required to supervise Mastercare South Bay's day to day operations and to supervise and assist its employees. Petitioner did neither. He simply allowed his name to be used to help a friend. At the hearing, Petitioner did not demonstrate a full understanding of his role as qualifying manager, and he did not acknowledge that his failure to properly carry out the responsibilities of qualifying manager contributed to the unsatisfactory work performed by Mastercare South Bay.

Petitioner has been on probation for just over one year. He has not demonstrated that he has taken the initiative to learn how to properly conduct inspections and to correct his misunderstanding of the responsibilities of a qualifying manager. Petitioner is encouraged to seek out educational courses designed to improve his understanding of the duties and responsibilities associated with his license. Petitioner failed to satisfy his burden of proof, and his petition is denied.

#### ORDER

The petition filed by Cesar G. Silvano for modification and/or termination of the probation imposed on Operator's License No. OPR 11237 is denied.

DATED: March 12, 2015

  
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DAVID TAMAYO  
President, Structural Pest Control Board